UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gibson Trucking, Inc.,

Plaintiff,

v.

Allied Waste Industries, Inc., and Browning-Ferris Industries of Springfield, Inc., a Delaware corporation,

Defendants.

MEMORANDUM OPINION AND ORDER
Civil No. 01-710 ADM/AJB

Julie H. Firestone, Esq., Briggs & Morgan, Minneapolis, MN, appeared on behalf of Plaintiff.

William M. Hennessey, Esq., Hoversten, Johnson, Beckmann & Hovey, Austin, MN, appeared on behalf of Defendant Allied Waste Industries, Inc.

Robert A. Judd, Esq., Wagner, Falconer & Judd, Minneapolis, MN, appeared on behalf of Defendant Browning-Ferris Industries of Springfield, Inc.

I. INTRODUCTION

On August 3, 2001, Plaintiff Gibson Trucking, Inc. ("Gibson"), argued before the undersigned United States District Judge its Motion to Remand [Doc. No. 4]. Defendant Allied Waste Industries, Inc. ("Allied"), and BFI Waste Systems of North America, Inc. ("BFIWS"), as successor in interest to Defendant Browning-Ferris Industries of Springfield, Inc. ("BFI/Springfield"), argued their Motion to Dismiss or, alternatively, for Transfer of Venue [Doc. No. 7]. Allied and BFIWS have moved to dismiss this action for (1) failure to state a claim against Allied upon which relief can be granted, (2) insufficient service of process with respect to BFI/Springfield, (3) lack of personal jurisdiction over both Allied and BFIWS, and (4) failure to join

NOV 0 2 2001
FILED
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD
DEPUTY CLERK

a necessary party under Rule 19(b). For the reasons set forth below, Gibson's Motion to Remand [Doc. No. 4] is denied. Allied's Motion to Dismiss [Doc. No. 7] for failure to state a claim is denied, BFIWS's Motion to Dismiss [Doc. No. 7] BFI/Springfield for insufficient service of process is granted, Allied and BFIWS's Motion to Dismiss [Doc. No. 7] for lack of personal jurisdiction is denied, and Allied and BFIWS's Motion to Dismiss [Doc. No. 7] for failure to join a necessary party is denied. Allied and BFIWS's Motion to Transfer Venue [Doc. No. 7] is denied.

II. BACKGROUND

On November 11, 1996, Gibson and BFI/Springfield entered into a contract under which Gibson agreed to provide transportation services and equipment relating to BFI/Springfield's operation of a transfer station in Springfield, Missouri. Each party claims the other has breached the contract.

Gibson is a Minnesota corporation with its principal place of business located in Montevideo, Minnesota. Allied is a Delaware corporation with its sole place of business in Scottsdale, Arizona. BFI/Springfield was a Missouri corporation at the time it contracted with Gibson, but on or about September 16, 1997, BFI/Springfield and Browning-Ferris Industries of Kansas City, Inc., merged into BFIWS. BFIWS is a Delaware corporation with its principal place of business located in Scottsdale, Arizona.

Gibson alleges that in July, 2000, BFI/Springfield merged with Allied. Gibson alleges that Allied is the successor to or parent corporation and alter ego of BFI/Springfield. Amended Complaint ¶5. On August 11, 2000, Defendants demanded that Gibson stop providing all trucking services. Id. at ¶23. Gibson filed suit in Minnesota state court against Allied for breach of contract on November 3, 2000. On November 27, 2000, Allied filed a Motion to Dismiss [Doc. No. 2] claiming not to be a proper party to the case. On March 27, 2001, BFIWS filed suit against Gibson in the Western District of Missouri for breach of the same contract. On April 11, 2001, Gibson filed an Amended Complaint adding BFI/Springfield as a defendant in the Minnesota state case. On April 25, 2001, Allied and BFIWS (as the successor in interest to defendant BFI/Springfield) filed a Joint Notice of Removal [Doc. No. 1] to the District of Minnesota. On July 9, 2001, Judge Gary A. Fenner dismissed the Western District of Missouri case without prejudice, finding that the first-filed rule was applicable because the Minnesota state case was filed first. BFI Waste Systems of North America, Inc. v. Gibson Trucking, Inc., No. 01-3137-CV-S-4 (W.D. Mo. July 9, 2001).

III. DISCUSSION

A. Motion to Remand

A defendant has thirty days to initiate removal from the time of receipt of service of the pleadings. 28 U.S.C. § 1446(b). Gibson argues that the statutory removal period expired on December 4, 2000, 30 days after Allied was served with Summons and Complaint on November 3, 2000. BFIWS and Allied argue that the removal period actually commenced for BFIWS on April 11, 2001, when BFI/Springfield was added as a defendant in Gibson's Amended Complaint. The joint notice of removal was filed by Allied and BFIWS on April 25, 2001, which was less than 30 days from the Amended Complaint naming BFI/Springfield, but more than 30 days from the original Complaint naming Allied.

The Eighth Circuit recently clarified the 30 day removal period rule in Marano Enterprises of Kansas v. Z-Teca Restaurants, L.P., 254 F.3d 753 (8th Cir. 2001). The Eight Circuit addressed this issue directly and concluded that "*each defendant* [is allowed] thirty days after receiving service within which to file a notice of removal, regardless of when – or if – previously served defendants had filed such notices." Id. at 756. (emphasis added).

BFIWS, as alleged successor in interest to BFI/Springfield, timely filed a notice of removal within 30 days from BFI/Springfield's receipt of service. BFIWS did so jointly with the only other defendant, Allied, in compliance with the rule of unanimity that all defendants must join in a removal petition pursuant to 28 U.S.C. § 1446(b). Id. at 757 n.6 ("Later-served defendants seeking removal are required to have the consent of all defendants . . . .") Since Gibson is a Minnesota corporation with its principal place of business in Minnesota, while neither Allied, BFI/Springfield, nor BFIWS are incorporated or have a principal place of business in Minnesota, the requirement of complete diversity necessary to establish diversity jurisdiction under 28 U.S.C. § 1332 is met. Since Gibson's Amended Complaint alleges damages exceeding $100,000, the amount in controversy requirement set forth in § 1332 for diversity jurisdiction is also satisfied. Amended Complaint ¶¶ 9-10. Therefore, this case was properly and timely removed by Allied and BFIWS. Gibson's Motion to Remand is denied.

B. Motion to Dismiss

i. Failure to State a Claim against Allied

A party may move to dismiss claims for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss, the pleadings are construed in the light most favorable to the nonmoving party, and the facts alleged in the complaint must be taken as true. Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994); Ossman v. Diana Corp., 825 F. Supp. 870, 879-80 (D. Minn. 1993). Any ambiguities concerning the sufficiency of the claims must be resolved in favor of the non-moving party. Ossman, 825 F. Supp. at 880. A complaint should be dismissed only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations. Hafley v. Lohman, 90 F.3d 264, 266 (8th Cir. 1996); Frey v. City of Herculaneum, 44 F.3d 667, 671 (8th Cir. 1995) (citations omitted). "A motion to dismiss should be granted as a practical matter . . . only in the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Frey, 44 F.3d at 671.

Gibson alleges that BFI/Springfield and Allied breached the parties' contract. Amended Complaint ¶¶26-27. Gibson alleges that Allied is the successor to or parent corporation and alter ego of BFI/Springfield (and, effectively, of its successor in interest BFIWS), and that therefore both are liable for breach of contract. Id. at ¶5. BFIWS asserts that it is the proper party in interest in this case, and that Allied is merely a "distant corporate relative" of BFIWS that was never a party to the contract, nor the successor in interest to BFI/Springfield. Def. Mem. in Sup. of Mot. to Dis. at 3-4. Allied is related to BFIWS in the following manner: Allied, a holding company, is the parent company of Allied Waste North America, Inc., which is the parent company of Browning-Ferris Industries, Inc., which in turn is the parent corporation of BFIWS. Id. at 3-4.

"Minnesota does not require pleadings to allege facts in support of every element of a cause of action." Barton v. Moore, 558 N.W.2d 746, 749 (Minn. 1997). Under Minnesota law, pleading broad general statements that may be conclusory is permitted. Id. Notice pleading is intended to give the adverse party fair notice of the theory on which the claim for relief is based, not to serve as the vehicle for alleging facts in support of every element of a cause of action. Id. Finally, "a conclusory claim to pierce the corporate veil is sufficient to support a claim" for purposes of a 12(b)(6) motion. Id.

It is true that generally, absent fraud or bad faith, a corporation will not be held liable for the acts of its subsidiaries. Association of Mill and Elevator Mut. Ins. Co. v. Barzen Int'l, Inc., 553 N.W.2d 446, 449 (Minn. App. 1996). "There is a presumption of separateness the plaintiff must overcome to establish liability by showing that the parent is employing the subsidiary to perpetrate a fraud and that this was the proximate cause of the plaintiff's injury." Id. That is, a showing of improper conduct is required to pierce the veil between related corporations. Id. Allied argues that Gibson therefore must have alleged fraud in its Complaint, and stated with particularity the circumstances constituting fraud pursuant to Fed. R. Civ. P. 9(b) and Minn. R. Civ. P. 9.02, in order to have stated a claim upon which relief can be granted against Allied. However, the presumption of separateness must be overcome to *establish* liability, not to satisfy the lesser requirement of notice pleading for an alter-ego theory sufficient to state a claim.

Assuming, as the Court must for purposes of this motion, that the facts plead in the Complaint are true, there is no insuperable bar to relief present here, and the Motion to Dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) must be denied.

ii. Insufficiency of Service of Process on BFI/Springfield

BFIWS argues that Gibson's service of process on BFI/Springfield was ineffective and moves to dismiss under Fed. R. Civ. P. 12(b)(5). BFIWS argues that BFI/Springfield merged into BFIWS more than three years prior to Gibson's service of its Amended Complaint naming BFI/Springfield as an additional defendant. Thus, BFIWS argues that BFI/Springfield did not exist at the time of attempted service and therefore it had no registered agent authorized to accept service of process.

Gibson asserts that the Amended Summons and Complaint was delivered on April 11, 2001, to the Sheriff of St. Louis County, Missouri, who then served the registered agent of BFI/Springfield.

Pl. Mem. in Opp. to Def. Mot. to Dis. at 8 (citing Firestone Aff. ¶ 4, Ex. C.).[1]

Missouri corporate law[2] provides that "[i]t is not for all purposes that the existence of a corporation which has been absorbed by merger into a surviving corporation comes to an end." State ex rel Signal L.P. Gas, Inc. v. Sanders, 566 S.W.2d 500, 503 (Mo. Ct. App. 1978). Missouri Statute § 351.450 provides that the separate existence of all corporations that are parties to a plan of merger or consolidation, except the surviving or new corporation, cease when the merger has been effected. Mo. Rev. Stat. § 351.450(2). The surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the corporations merged into it, but Missouri law allows that any claim existing against any of such corporations may be prosecuted to judgment as if such merger had not taken place, or such surviving corporation may be substituted in its place. Mo. Rev. Stat. § 451.450(5). While this statute does permit suit against an absorbed corporation, its scope is limited. A merged corporation is only "subject to suit in the name of the absorbed corporation on any claim existing . . . against them *prior to the merger*." Signal, 566 S.W.2d at 503. (emphasis added). BFI/Springfield merged into BFIWS on September 16, 1997. The initial alleged breach of contract occurred on November 5, 1999. Amended Complaint ¶12. Thus, Gibson had no claim *existing* against BFI/Springfield "prior to the merger" into BFIWS. As such, the Missouri statute does not allow suit against the absorbed corporation BFI/Springfield in its own name. See Signal, 566 S.W.2d at 503. Under § 351.450, BFI/Springfield had ceased to exist as a viable defendant at the time this suit was commenced. Therefore, BFI/Springfield could not have had an agent authorized to accept service of process.[3] BFIWS's Motion to Dismiss BFI/Springfield under Fed. R. Civ. P. 12(b)(5) for insufficiency of service of process is granted.

---

[1] "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ." Fed. R. Civ. P. 15. The motion to dismiss filed by Allied on November 27, 2000, was not a responsive pleading. See Hantover, Inc. v. Omet, S.N.C. of Volentieri & C., 688 F.Supp. 1377, 1386 (W.D. Mo. 1988) (motion to dismiss does not constitute a responsive pleading so as to require leave of court to amend complaint). Thus, Gibson's Amended Complaint adding BFI/Springfield as a defendant was properly filed.

[2] All parties agree that the contract at issue in this case expressly provides that it "shall be construed in accordance with, and governed by, the laws of the State of Missouri." Aff. of William M. Hennessey at ¶2.

iii. Lack of Personal Jurisdiction

A plaintiff need only make a prima facie showing of personal jurisdiction over the defendant to survive a motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd., 89 F.3d 519, 522 (8th Cir. 1996). In evaluating the prima facie showing, the court must view the evidence in the light most favorable to the plaintiff, and resolve all factual conflicts in the plaintiff's favor. Id.

To establish personal jurisdiction, the facts presented must satisfy the requirements of the forum state's long-arm statute, and the exercise of personal jurisdiction over the defendant must not violate due process. Id. Because Minnesota long-arm statutes extend jurisdiction to the maximum limit consistent with due process, this court need only evaluate whether the requirements of due process are satisfied. Wessels, Arnold & Henderson v. National Medical Waste, Inc., 65 F.3d 1427, 1431 (8th Cir. 1995).

Due process mandates that a court exercise personal jurisdiction over a non-resident defendant only when the defendant has "certain minimum contacts" with the state such that summoning the defendant to the forum state does not offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Sufficient contacts exist when the defendant's conduct and connection with the forum state are such that the defendant should "reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). In every case there must be some act by which a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958).

---

[3] The parties frame this issue in terms of insufficiency of service of process, but the statutory bar to suit against BFI/Springfield "in its own name" really speaks more to a lack of personal jurisdiction over BFI/Springfield as such. Under the facts of this case, however, the distinction is inoperative, as BFI/Springfield is not a proper party to this suit in any event.

The Eighth Circuit applies a five-factor test in analyzing the constitutional requirements needed for personal jurisdiction: (1) the nature and quality of defendant's contacts with the forum state; (2) quantity of contacts; (3) source and connection of the cause of action with those contacts; (4) the interest of the forum state; and (5) the convenience of the parties. Wessels, 65 F.3d at 1432. The first three factors are of primary importance, and the last two are "secondary factors." Digi-Tel, 89 F.3d at 523.

A single transaction with the forum state can be sufficient to establish personal jurisdiction over a defendant. Krambeer v. Eisenberg, 923 F.Supp. 1170, 1174 (D. Minn. 1996).[4] Where nonresidents initiated contact with Minnesota residents and took some action that induced the residents to enter into the transaction, Minnesota courts have exercised personal jurisdiction over nonresidents based on a single transaction. See TRWL Financial Establishment v. Select Int'l, Inc.,

---

[4] The Eighth Circuit has held repeatedly that use of interstate mail or telephone alone is insufficient to establish minimum contacts with the forum state. Id. (internal citations omitted). Interstate communication such as use of telephone and mail is a "secondary or ancillary" factor. Bell Paper Box, Inc. v. Trans Western Polymers, Inc., 53 F.3d 920, 923 (8th Cir. 1995). BFI/Springfield did use interstate communication to contact Gibson, but this alone does not establish jurisdiction.

527 N.W.2d 573, 577 (Minn. Ct. App. 1995).

a. Allied

The appearance of an alter-ego of a defendant is a sufficient basis for personal jurisdiction over that defendant. Miller v. Tony and Susan Alamo Foundation, 924 F.2d 143, 148 (8th Cir. 1991). A non-resident corporation may subject itself to jurisdiction in a state by virtue of the activities of its subsidiary company in that state, as long as the companies are organized and operated so that one corporation is an instrumentality or alter-ego of the other corporation. Zimmerman v. American Inter-Ins. Exchange, 386 N.W.2d 825, 828 (Minn. Ct. App. 1986); see also Lakota Girl Scout Counsel, Inc. v. Havey Fund-Raising Management, Inc., 519 F.2d 634, 638 (8th Cir. 1975) (where a corporation is the alter ego of the stockholders so as to justify disregard of the corporate entity, jurisdiction over the corporation will support jurisdiction over the stockholders).

As stated above, Allied is a related corporation to BFIWS, although two steps removed. Viewing the evidence in the light most favorable to the plaintiff, Gibson has made a prima facie showing of personal jurisdiction over Allied in alleging that it is the alter-ego of BFI/Springfield, whose successor in interest is BFIWS. Allied's Motion to Dismiss for lack of personal jurisdiction is denied.

b. BFIWS

BFIWS concedes that it satisfies the minimum contacts requirements with the State of Minnesota regarding the first three parts of the Wessels test. Def. Mem. in Sup. of Mot. to Dis. at 7. The only question is whether the two secondary factors, interest of the forum state and convenience of parties, warrant denial of personal jurisdiction. After establishing minimum contacts, other factors are considered to determine whether the assertion of jurisdiction would comport with fair play and substantial justice. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985). The following considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required: (1) the burden on the defendant, (2) the forum State's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies. Id. at 477.

BFIWS argues that it would be under a heavy burden if forced to litigate in Minnesota because all the services performed and operations conducted took place in Missouri, and virtually all the known witnesses reside in Missouri. BFIWS also argues Gibson's interest in effective relief would be protected if the action were transferred to Missouri.

Where a defendant has purposefully directed his activities at forum residents, as BFIWS has here through BFI/Springfield's soliciting and executing the contract with Gibson in the state of Minnesota (see Def. Mem. in Sup. of Mot. to Dis. at 11-12), "he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Id. at 477. The considerations submitted by BFIWS do not make jurisdiction "unreasonable" in this case. The factors are intended to be weighed with a mind toward protecting against the use of jurisdictional rules to make litigation "so gravely difficult and inconvenient" that a party is unfairly at a "severe disadvantage" in comparison to his opponent. Burger King, 471 U.S. at 478. The inconveniences to BFIWS do not rise to this level of severity with regard to the propriety of jurisdiction. As the Burger King Court noted, in cases where factors do not render jurisdiction unreasonable, "a defendant claiming substantial inconvenience may seek a change of venue." Id. at 477. BFIWS's

Motion to Dismiss for lack of personal jurisdiction is denied.

iv. Failure to Join a Party

Federal Rule of Civil Procedure 19(a) states:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest . . . . If the person has not been so joined, the court shall order that the person be made a party.

Fed. R. Civ. P. 19(a). BFIWS argues that it cannot be made a party because the court lacks personal jurisdiction over it, and moves the court to dismiss the case for failure to join a necessary party under Fed. R. Civ. P. 19(b).

It is uncontested that BFIWS is in fact the successor in interest to BFI/Springfield, the original party to the contract with Gibson. As such, BFIWS has an interest relating to the subject matter of the action, and adjudicating this dispute in its absence would impair BFIWS's ability to protect that interest, particularly given the dismissal of the case brought by BFIWS against Gibson in the Western District of Missouri. As discussed above, this Court has personal jurisdiction over BFIWS making them subject to service of process in Minnesota. Therefore, the Court hereby orders that BFIWS be added as a party defendant to this action under Rule 19(a). Allied and BFIWS's Motion to Dismiss for failure to join a necessary party is denied.

C. Motion to Transfer Venue

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. § 1404. In assessing a motion to transfer venue, there is a strong judicial preference for permitting plaintiff to choose its forum. Janel Russell Designs, Inc. v. Mendelson & Assoc., 114 F.Supp.2d 856, 862 (D. Minn. 2000). "A motion to transfer should be granted only where the defendant makes a clear showing that the action should be transferred, and it must be denied if the effect of a transfer would merely be to shift the inconvenience from one party to the other." Id. The defendant bears a heavy burden of showing that the balance of factors strongly favors transfer. Radisson Hotels Int'l, Inc. v. Westin Hotel Co., 931 F.Supp. 638, 641 (D. Minn. 1996).

The three factors considered by courts are: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice. Id. (citing Nelson v. Bekins Van Lines Co., 747 F.Supp. 532, 535 (D. Minn. 1990)). In considering convenience of witnesses, courts have focused on the following factors: (1) the number of non-party witnesses, (2) the location of all witnesses, and (3) the preference of courts for live testimony as opposed to depositions. Graff v. Qwest Communications Corp., 33 F.Supp.2d 1117, 1121 (D. Minn. 1999). The interest of justice is the most important factor, and is determined by considering the relative ability of the parties to bear the expenses of litigating in a distant forum, and the relative familiarity of the two courts with the law to be applied. Radisson, 931 F.Supp. at 641-642. Other factors relating to the interest of justice include judicial economy, the plaintiff's choice of forum, obstacles to a fair trial, and the ability of parties to enforce a judgment. Graff, 33 F.Supp.2d at 1122.

Allied and BFIWS assert that Missouri is a more convenient forum given that the contract was performed in Missouri, and the relevant operations of BFIWS are located in Missouri. Allied and BFIWS also assert that there are at least two non-party witnesses and multiple BFIWS and Gibson employees located in Missouri, making it a more convenient forum for the witnesses. Finally, Allied and BFIWS assert that transfer to Missouri is in the interest of justice because the Missouri federal court is more familiar with Missouri state law, and several witnesses with knowledge of Gibson's performance of the contract are located in Missouri. Gibson asserts that Minnesota is a more convenient forum because while it is incorporated and has a principal place of business here, none of the defendants are incorporated or have a principal place of business in Missouri. Gibson also claims that numerous employee witnesses, and at least one non-party witness, are located in Minnesota. Finally, Gibson argues that the first-filed rule and the judicial preference for a plaintiff's forum choice make litigation in Minnesota in the interest of justice.

The reasons why the respective forums are convenient for the parties involved are offsetting. A shift of convenience does not warrant a transfer. Both forums are home to a number of party and non-party witnesses. While some witnesses may be more relevant than others, the weight of the convenience of witnesses "should not be determined solely upon a contest between the parties as to which of them can present a longer list of possible witnesses located in the respective districts; the party seeking the transfer must clearly specify the essential witnesses to be called and must make a general statement of what their testimony will cover." Graff, 33 F.Supp.2d at 1121-1122. Allied and BFIWS have not made a showing that the convenience of the witnesses in Missouri strongly supports a transfer of venue. The only arguably compelling factor remaining is the application of Missouri law in the case.

This court is able to competently apply Missouri law. The heavy burden on Allied and BFIWS to demonstrate that a Missouri venue is "strongly favored," particularly in light of the strong judicial preference for allowing a plaintiff to choose its forum, has not been met. Allied and BFIWS's Motion to Transfer Venue is denied.

IV. CONCLUSION

Based on the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Gibson's Motion to Remand [Doc. No. 4] is **DENIED**,

2. Allied's Motion to Dismiss [Doc. No. 7] for failure to state a claim is **DENIED**,

3. BFIWS's Motion to Dismiss [Doc. No. 7] defendant BFI/Springfield for insufficiency of service of process is **GRANTED**,

4. Allied's Motion to Dismiss [Doc. No. 7] for lack of personal jurisdiction is **DENIED**,

5. BFIWS's Motion to Dismiss [Doc. No. 7] for lack of personal jurisdiction is **DENIED**,

6. Allied and BFIWS's Motion to Dismiss [Doc. No. 7] for failure to join a necessary party is **DENIED**,

7. BFIWS is to be joined as a defendant, and

8. Allied and BFIWS's Motion to Transfer Venue [Doc. No. 7] is **DENIED**.

BY THE COURT:

Ann Montgomery

ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE

Date: November 2, 2001